

# SENATE . . . . . No. 1240

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Sonia Chang-Díaz**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act Improving the Fairness of Tax Laws.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	Middlesex and Worcester
Denise Provost	27th Middlesex
Sonia Chang-Díaz	Second Suffolk

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT IMPROVING THE FAIRNESS OF TAX LAWS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Said chapter 63 is further amended by inserting after section 29E the  
2 following section:-

3           Section 29F. Certain Non-Insurance Trade or Business Income.

4           (a) An insurance company subject to sections 20 through 29E shall, in addition to the excise  
5 determined under those sections, be subject to this section if the company owns, directly or  
6 indirectly, 50 per cent or more of the interests in an entity treated as a partnership or disregarded  
7 entity that is engaged in a non-insurance trade or business in Massachusetts.

8           (b) Without limitation, this section shall not apply to income of an insurance company  
9 from the buying, selling, holding, or dealing in securities or other investment intangibles on its  
10 own behalf, and not as a broker. Gain from the sale of real property and improvements shall also  
11 be excluded to the extent that the gain exceeds cumulative depreciation and similar expenses  
12 with respect to the property and improvements that have been deducted in determining income  
13 taxable under subsection (c).

14           (c) An insurance company with non-insurance trade or business income from a  
15 partnership or disregarded entity, as described in subsection (a), shall file a return under this

chapter with respect to the income and activities of the partnership or disregarded entity in the manner of a business corporation, financial institution, or utility corporation, as applicable, and pay the associated excise. The income and activities shall, to the extent applicable, be included in a combined return filed under section 32B.

(d) The commissioner may issue regulations or other guidance as may be needed for the implementation of this section.

SECTION 2. Chapter 64D of the General Laws is hereby amended by striking out sections 1 to 3, as so appearing, and inserting in place thereof the following 3 sections:-

Section 1. (a) There shall be levied, collected and paid the excise specified in this section on each conveyance of real property located in the commonwealth or interest in real property located in the commonwealth: when the consideration for the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining on the interest or property at the time of the sale, exceeds \$100 and does not exceed \$500, \$2; and for each additional \$500 or fractional part thereof, \$2, but in Barnstable county, the excise specified in this section shall be \$1.50 for each \$500 or fractional part of the consideration, excluding a consideration of between \$0 and \$100 dollars. The excise shall be payable at the registry of deeds in the county in which the real property lies, regardless of whether the conveyance is evidenced by a deed, instrument, or other writing or whether the deed, instrument, or other writing is otherwise recorded. Notwithstanding any other provisions of this section or any other general or special law to the contrary, Nantucket county may disburse and expend deposits in county excise funds for the purpose of facilities and programs related to law enforcement, including the planning, improving or constructing of police stations and other related facilities and programs. This chapter shall not apply to any instrument or writing given to secure a debt or

to any conveyance to which the commonwealth, a city or town of the commonwealth, or the United States or any of their agencies are a party.

(b) For purposes of calculating the excise set forth in this chapter, under regulations to be adopted by the commissioner, the commissioner may treat multiple transactions as a single transaction or may otherwise adopt reasonable rules to avoid multiple applications of the excise when the transactions are components of a single project including, but not limited to, projects involving historic rehabilitation tax credits, the Community Preservation Act and the development of affordable housing.

(c) For purposes of this chapter, unless otherwise expressly stated, the following words shall have the following meanings:

"Conveyance", a transfer or transfers, directly or indirectly, of any interest in real property by any method, including but not limited to sale, exchange, grant, assignment, trust indenture, or transfer or acquisition of a controlling interest in any entity with an interest in real property, but the transfer or acquisition of a controlling interest shall be considered to be a conveyance only if the fair market value of the interest or interests in real property wherever situated that is owned by the entity, whether directly or through subsidiary entities, equals or exceeds 80 per cent of the fair market value of all of the assets of the entity.

"Interest in real property", includes, but is not limited to, an estate in fee simple, a beneficial interest, a life estate, a perpetual easement, or a leasehold or sublease interest, ordinary or proprietary, but only where the sum of the term of the lease or sublease and any options for renewal, extension, or the like exceeds 49 years.

"Transfer or acquisition of a controlling interest", occurs, in the case of a corporation which has an interest in real property, when a person, or group of persons acting in concert, transfers or

acquires, directly or indirectly, including through the transfer or acquisition of an interest in another entity, a total of 50 per cent or more of the total combined stock of the corporation, by vote or value. In the case of any partnership, limited liability company, association, trust, or other entity having an interest in real property, the transfer or acquisition of a controlling interest therein occurs when a person, or group of persons acting in concert, transfers or acquires, directly or indirectly, including through the transfer or acquisition of an interest in another entity, a total of 50 per cent or more of the capital, profits, or beneficial interest in the entity.

(d) Persons are considered to be "acting in concert" when, in accordance with regulations adopted by the commissioner, they have a relationship such that 1 person influences or controls the actions of another. Where the individuals or entities are not commonly controlled or owned, persons shall be considered to be acting in concert when, in accordance with regulations adopted by the commissioner, the unity with which the sellers or purchasers have negotiated and will consummate the transfer of ownership interests indicates that they are acting as a single entity. If the transfers or acquisitions are completely independent, each seller selling or purchaser buying without regard to the identity of the other sellers or purchasers, then the transfers or acquisitions shall be treated as separate transfers or acquisitions.

(e) For purposes of determining whether a controlling interest is transferred or acquired, only transfers or acquisitions of interests occurring on or after January 1, 2008, shall be added together. Where there is a transfer or acquisition of an interest in an entity that has an interest in real property on or after January 1, 2008, and subsequently there is a transfer or acquisition of an additional interest or interests in the same entity, the transfers or acquisitions shall be added together to determine whether a transfer or acquisition of a controlling interest has occurred. No transfer or acquisition of an interest in an entity that has an interest in real property shall be

85 added to another transfer or acquisition in the same entity if they occur more than 3 years apart,  
86 unless the transfers or acquisitions are so timed as part of a plan to avoid the excises specified in  
87 this section. Notwithstanding the foregoing, neither a bona fide pledge of stock, partnership, or  
88 other interest as loan collateral nor any conveyance of publicly traded stock, partnership, or other  
89 interest, shall be considered subject to taxation under this chapter.

90 (f) The commissioner may adopt regulations to implement this section.

91 Section 2. The excise imposed by this chapter shall be paid by the person who conveys the  
92 real property or interest in real property, or for whose benefit the real property or interest in it is  
93 conveyed. When the conveyance consists of a transfer or an acquisition of a controlling interest  
94 in an entity with an interest in real property, the "person who conveys" the interest means, but is  
95 not limited to, a shareholder, partner, or other interest-holder transferring stock, a partnership  
96 interest, or another equity interest, respectively. The payment of the excise shall be denoted by  
97 "stamps," as that term is defined in section 3, affixed to or printed directly on the deed,  
98 instrument or writing evidencing the conveyance, or if none, to a form prescribed by the  
99 commissioner for the purpose. In any case in which a conveyance subject to the excise imposed  
100 in this chapter is not evidenced by a deed, instrument, or writing that will be recorded, the  
101 conveyance shall be evidenced by recording the stamp form required by this section. The person  
102 affixing or printing a stamp shall cancel the same by writing or stamping on it the initials of his  
103 name and the date when the stamp is affixed or printed, in such manner that it cannot be used  
104 again; but the stamp shall not be so defaced as to prevent determination of its denomination and  
105 genuineness.

106 The word "person" shall, for the purposes of this chapter, include political subdivisions of the  
107 commonwealth, individuals, partnerships, corporations, trusts, limited liability companies,  
108 societies, associations, or any other form of unincorporated enterprise.

109 Section 3. (a) Stamps for the purpose of paying the excise under this chapter shall be  
110 prepared in the form, of the denominations and in the quantities that the commissioner may  
111 prescribe. The commissioner shall provide for the sale of the stamps in the places and at the  
112 times that the commissioner considers necessary. The commissioner shall provide for the  
113 custody of the stamps and other equipment used in the production of the stamps in the manner  
114 that he considers expedient. For purposes of this section, the term "stamps" shall include both  
115 adhesive stamps and computer generated images printed directly on a deed, instrument, writing,  
116 or form required by section 2.

117 (b) The commissioner may cause to be installed in any registry of deeds 1 or more metering  
118 machines through which the stamps may be sold and may remove the machine if the  
119 commissioner considers it expedient. The commissioner may also approve computer hardware  
120 and software, purchased at the expense of the registry, to produce stamps. Upon the installation  
121 of a metering machine or approved computer hardware and software, the register of deeds shall  
122 sell stamps to persons requiring the same for affixation or printing to deeds, instruments,  
123 writings, or forms in accordance with this chapter.

124 (c) Each register of deeds shall on or before the tenth day of each month account to the  
125 commissioner on a form prescribed and furnished by him for all sales made by the register  
126 during the preceding calendar month and shall turn over to the commissioner all moneys  
127 received from the sales, less any adjustments approved by him. Each register of deeds, with the  
128 approval of the advisory board on county expenditures and the county commissioners, shall for

the purposes of purchasing equipment or services relative to electronic reporting, indexing, computers and systems designed to modernize and maintain registry records, retain interest earned on the deposit of excise stamp fees. Each register shall, annually, furnish to the county treasurer a financial report regarding this interest and the expenditure of it in accordance with accepted accounting procedures.

The machines or computer equipment shall, upon installation, be subject to inspection by the commissioner or his duly appointed agent or agents at any time.

Each register of deeds shall give to the commissioner a bond, in a penal sum and with sureties approved by the commissioner, conditioned satisfactorily to account for money received by the register in his official capacity from the sale of the stamps. The premium for the bond shall be paid by the state treasurer upon certification by the commissioner.

(d) Sections 3A and 3B shall not be applicable to any registry of deeds during the period in which a metering machine or approved computer hardware or software is installed in that registry, nor to any registry operated by the state secretary.

SECTION 3. Said chapter 64D is hereby further amended by striking out section 6, as so appearing, and inserting in place thereof the following section:-

Section 6. The commissioner shall administer and enforce the excise imposed by this chapter and shall adopt regulations as necessary to implement this chapter. At any time after the making of a conveyance subject to the excise imposed by this chapter, the commissioner may investigate and ascertain whether the excise, in the proper amount, was paid. For this purpose, the commissioner may exercise all powers granted to him under section 70 of chapter 62C. Whoever refuses to produce the books, papers, records, or other data required to be produced under section 70, or fails to preserve the same for 3 years or a longer period that the commissioner may by



152 regulation provide, or alters, cancels or obliterates any part of this data, or makes any false entry  
153 therein, shall be punished by a fine of not less than \$500 nor more than \$5,000, or by  
154 imprisonment for not less than 3 months nor more than 2 years, or both.

155 SECTION 4. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby  
156 amended by inserting after paragraph (b) thereof the following paragraph:--

157 (b1/2) "Doing business in the commonwealth", ownership or operation of a bed and breakfast  
158 establishment, hotel, lodging house or motel that is located in the commonwealth, maintenance  
159 otherwise of a place of business in the commonwealth, the presence of an employee in the  
160 commonwealth on more than a de minimis basis, solicitation in the commonwealth of orders for  
161 transfer of occupancy of accommodations located in the commonwealth, solicitation in the  
162 commonwealth by a reseller of a contract or other cooperative arrangement with an operator with  
163 respect to accommodations located in the commonwealth, inspection in the commonwealth of  
164 accommodations that may be the subject of a cooperative arrangement between an operator and a  
165 reseller, or other exploitation of the market for accommodations or resale of accommodations  
166 located in the commonwealth by any means whatsoever, including, but not limited to, salesmen,  
167 solicitors or representatives in the commonwealth, whether those salesmen, solicitors or  
168 representatives are employed by the operator or reseller, by a person affiliated with the operator  
169 or the reseller by common ownership, or by any other party. This definition is intended to  
170 extend the jurisdiction of the commonwealth over operators and resellers to the full extent  
171 authorized by the Constitution and the laws of the United States.

172 SECTION 5. Said section 1 of said chapter 64G, as so appearing, is hereby further amended  
173 by inserting after the word "operator", in line 49, the following words: -- or the room reseller.

174 SECTION 6. Section 16 of said chapter 62C, as so appearing, is hereby amended by inserting  
175 after the word “operator”, in line 53, as so appearing, the following words: -- or room reseller.

176 SECTION 7. Section 25 of said chapter 62C, as so appearing, is hereby amended by  
177 inserting after the word “operator”, in line 6, the following words: -- or room reseller.

178 SECTION 8. Section 67 of said chapter 62C, as so appearing, is hereby amended by inserting  
179 after the word “operator”, in line 2, the following words: -- or room reseller.

180 SECTION 9. Said section 1 of said chapter 64G, as so appearing, is hereby further amended  
181 by adding the following paragraph:-

182 (k) "Room Reseller" or “Reseller”, any person having any right, permission, license, or other  
183 authority from or through an operator to reserve or arrange transfer of occupancy of  
184 accommodations the transfer of which is subject to this chapter, such that the occupant pays all  
185 or a portion of the rent to the reseller, but the term shall not include a tour operator.

186 SECTION 10. Said chapter 64G is hereby further amended by striking out section 3, as so  
187 appearing, and inserting in place thereof the following section: --

188 Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or rooms  
189 in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth by  
190 any operator or room reseller doing business in the commonwealth at the rate of 5 per cent of the  
191 total amount of rent for each occupancy. No excise shall be imposed if the total amount of rent  
192 paid by the occupant is less than \$15 per day or its equivalent.

193 The operator or room reseller shall pay the excise to the commissioner at the time provided  
194 for filing the return required by section 16 of chapter 62C.

195 SECTION 11. Section 3A of said chapter 64G, as so appearing, is hereby amended by  
196 striking out the first 3 sentences and inserting in place thereof the following 3 sentences:-

Any city or town that accepts this section may impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or motel located within the city or town by any operator or room reseller at a rate up to, but not exceeding, 4 per cent of the total amount of rent paid by the occupant for the occupancy ,but the city of Boston may impose a local excise upon the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house or motel located within the city by any operator or room reseller at the rate of up to but not exceeding 4.5 per cent of the total amount of rent paid by the occupant for the occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than \$15 per day or its equivalent or if the accommodation is exempt under section 2 of this chapter. The operator or room reseller shall pay the local excise tax imposed under this section to the commissioner at the same time and in the same manner as the excise tax due the commonwealth.

SECTION 12. Said chapter 64G is hereby further amended by inserting after section 3A the following section:-

Section 3B. Notwithstanding any other provision of this chapter, in cases in which occupancy is transferred through the use of a room reseller, the application of the excise shall be as follows:

If the room reseller is required to register under section 6 to collect the excise, the room reseller shall collect and pay to the commissioner the excise upon the amount of rent paid by the occupant to the room reseller, less the amount of rent that the reseller has paid to the operator.

Whether or not the room reseller is so registered, the operator shall collect and pay to the commissioner the excise upon the amount of rent paid to the operator by the reseller or the occupant.

SECTION 13. Said chapter 64G is hereby further amended by striking out sections 4 to 6, as so appearing, and inserting in place thereof the following 3 sections:--

Section 4. Reimbursement for the excise imposed under sections 3 and 3A shall be paid by the occupant or the room reseller to the operator and by the occupant to the room reseller, as the case may be, and each operator and room reseller doing business in the commonwealth shall add to the rent and shall collect from the occupant or the room reseller the full amount of the excise imposed, in accordance with sections 3 and 3A, and that excise shall be a debt to the operator or room reseller, when so added to the rent, and shall be recoverable at law in the same manner as other debts.

Section 5. The amount of the excise collected by the operator or the room reseller under this chapter shall be stated and charged separately from the rent and shown separately on any record thereof at the time the transfer of occupancy is made, or on any evidence of the transfer issued or used by the operator or the room reseller. A room reseller shall not be required to disclose to the occupant the amount of tax charged by the operator. The reseller shall represent to the occupant that the separately stated taxes charged by the reseller include taxes charged by the operator.

Section 6. No person shall operate a bed and breakfast establishment, hotel, lodging house or motel in this commonwealth, or do business as a room reseller in the commonwealth, unless a certificate of registration has been issued to him in accordance with section 67 of chapter 62C.

SECTION 14. Section 7A of said chapter 64G, as so appearing, is hereby amended by inserting after the word "operator", in line 1, the following words:- or room reseller .

SECTION 15. Said section 7A of said chapter 64G, as so appearing, is hereby further amended by inserting after the word "operator", in line 7, the following words:- or room reseller.

SECTION 16. Said chapter 64G is hereby further amended by striking out section 7B, as inserted by section 30 of chapter 163 of the acts of 2005, and inserting in place thereof the following section:-

Section 7B. Every operator or room reseller who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable for those amounts to the commonwealth. The terms “operator” and “room reseller”, as used in this section, include an officer or employee of a corporation, or a member or employee of a partnership, who as an officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 17. Section 12 of said chapter 64G, as appearing in the 2004 Official Edition, is hereby amended by inserting after the word “operator”, in line 5, the following words:- and each room reseller.

SECTION 18. The definition of “sale at retail” or “retail sale” in section 1 of chapter 64H of the General Laws, as so appearing, is hereby amended by inserting after the word “business.”, in line 129, the following sentence:- A sale for resale in the regular course of business does not include a lease, rental or sale to a leasing or procurement entity for subsequent lease, rental or sale to any related entity, related member as defined in section 31I of chapter 63, or affiliate, including persons described in. section 267(b) or 707(b)(1) of the Internal Revenue Code of the United States. The previous sentence does not apply to a sale of tangible personal property held for resale to any third party that is not related as described in this section.

SECTION 19. Section 6 of said chapter 64H, as amended by section 15 of chapter 260 of the acts of 2006, is hereby further amended by inserting after paragraph (ww), the following paragraph:-

(xx) Sales of tangible personal property purchased by a business entity for keeping or retention in the commonwealth for the purpose of subsequently transporting that property outside of the commonwealth for business use thereafter solely outside of the commonwealth, or for the purpose of being processed, fabricated or manufactured into other tangible personal property to be transported outside of the commonwealth and thereafter used solely outside of the commonwealth. A taxpayer must retain adequate documentation substantiating that the requirements of this exemption are met.

SECTION 20. Section 8 of chapter 64I of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the word "purchase.", in line 45, the following sentence:- Notwithstanding this paragraph, tangible personal property purchased for placement in inventory is presumed to be purchased for use in the commonwealth if the property is subsequently used in the commonwealth without regard to whether it is brought into the commonwealth within 6 months after purchase, and use tax is due at the time the property is first used in the commonwealth.

SECTION 21. The commissioner may adopt rules and regulations to implement sections 28, 30 and 97 to 107, inclusive, of this act.

SECTION 22. Sections X to XX, shall be effective for tax years beginning on or after July 31st, 2009.

SECTION 23. Sections 108 and 109 shall apply to transactions on or after January 1, 2008 and shall have no retroactive impact on existing leases or rentals. Section 110 shall apply to property brought into the commonwealth for use on or after January 1, 2008. A termination of any existing lease or rental between related entities, related members, or affiliates, including persons described in section 267(b) or 707(b)(1) of the Internal Revenue Code, after the effective

286 date of this act shall be considered to be a sale at fair market value of the leased or rented  
287 property if the lessee retains possession or use of the property.

288 SECTION 24. Section 1,2,10 to 13, inclusive and 19 shall be effective for tax year beginning  
289 on or after January 1<sup>st</sup>, 2009.